Bhagwana Ram & Ors.vs. Civil Judge(S.D.), Rajgarh & Ors.
(S.B.CIVIL WRIT PETITION NO. 5212/07)

Date: 05.12.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr. N.L. Joshi, for the petitioner(s).
Mr. B.L. Choudhary, for the respondent(s).

This writ petition is directed against order dated 3.8.07 passed by the learned Civil Judge(S.D.)(Debt Relief Court), Rajgarh, Churu in D.R.C.case no. 8/02, whereby an application preferred by the non applicants, the petitioners herein seeking an opportunity to produce the witnesses, has been rejected.

The brief facts of the case are that the applicants , respondents no. 2 and 3 herein preferred an application u/s 6 of Rajasthan Relief of Agriculture Indebtness Act, 1957 against the petitioners herein before the Debt Relief Court, Rajgarh , district Churu. After service of the notice , the petitioners herein put in appearance through their counsel and on 10.03.03 filed a parawise reply to the statement of claim submitted by on behalf of the applicants. On the basis of the pleading of the parties, the issues were framed by the learned trial Court on 28.1.04. Thereafter, the matter was adjourned time to time for the applicants' evidence. On 3.8.04 , the applicants produced the affidavits of P.W. 1 to P.W. 4 and also preferred an application

u/s 45 of Indian Evidence Act. The said application was allowed by the learned Debt Relief Court on 30.11.06 by the consent of the parties. Thereafter, the matter was adjourned for taking specimen signatures of the petitioners. Ultimately, the specimen signature of Bhagwana Ram was obtained on 31.1.2007 . On the said date, the applicants filed yet another application for obtaining specimen signature of the petitioner herein Shri Chand. The said application was dismissed on 9.2.07 and the matter was adjourned to 2.3.07 for filing the report of hand writing expert. The report of the hand writing expert was filed on 17.5.07 and the statement of P.W. 5 Shamsher Singh was recorded. The matter was adjourned to 1.6.07 for the non-applicants' evidence . On the aforesaid date, no witness was produced on behalf of the non-applicants, therefore, the matter was adjourned to 16.7.07 . On the said date, the matter was again adjourned on the request made on behalf of the non-applicants, on payment of cost Rs.100/-. Since, no witness was present on behalf of the non-applicants on 3.8.07, therefore, an application was preferred on their behalf for granting an opportunity to produce the witnesses on the next date of hearing, however, the learned trial court declined to grant any further opportunity and proceeded to close the evidence of non-applicants.

It is to be noticed that after framing of the issues on 28.1.04, the matter remained pending for the applicants evidence till 17.5.07. From the perusal of the order sheet placed

on record as Annexure 3 , it is apparent that the delay in the proceedings has been caused either on account of the applicants seeking time to lead evidence, and filing the application for the expert evidence etc. or on account of non availability of the Presiding Officer. In no manner, the delay caused in proceedings can be attributed to the petitioners. It is to be noticed that the respondents herein were granted several opportunities to complete their evidence. As a matter of fact, they have taken more than 3 years period for completion of their evidence.

Thus, in the facts and in the circumstances of the present case, the learned trial court has seriously erred in denying an opportunity to the petitioners to lead their evidence. It will be unfair to deny the petitioners an opportunity to lead their evidence.

In this view of the matter, the writ petition is allowed. Order impugned dated 3.8.07 passed by the learned trial court is set aside. The application preferred by the petitioners before the learned Debt Relief Court, seeking an opportunity to lead evidence is allowed. The petitioners are directed to produce their all witnesses for examination on the date to be fixed by the trial court. No order as to costs.

(SANGEET LODHA),J.